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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,132	01/20/2004	Alexander M. McQueen	51306/789:1	4123
33451	7590	10/05/2004	EXAMINER	
PSC SCANNING, INC. - STOEL RIVES LLP C/O STOEL RIVES LLP 900 SW 5TH AVENUE PORTLAND, OR 97204			HESS, DANIEL A	
			ART UNIT	PAPER NUMBER
			2876	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/762,132

Applicant(s)

MCQUEEN, ALEXANDER M.

Examiner

Daniel A Hess

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-34 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 23-34 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 20 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/14/04.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Priority

Acknowledgement is made of applicant's claim for priority based on a parent case, US App. No. 09/905,042.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 23-26 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe et al. (US 6,206,286).

Art Unit: 2876

Re claim 26: See notably claim 1 on page 15 of Watanabe et al. Identification data is (column 15, line 7 to column 15, line 15) acquired by reading a bar code that is implicitly on a product. A timer (column 15, line 18 to column 15, line 38) has a delay time such that expires after that delay time such that during the time window before the delay has expired, if the present scan matches a previous scan (column 15, lines 22-25), that scan will not be reported; it will only be reported if the second scan does not match the first scan.

Watanabe et al. does not explicitly teach that a selection is made from among a plurality of delay times. However, in Watanabe et al. (column 11, lines 35-40) the double read-preventive timer is simply a software variable. As a software variable (as opposed to a value that is so-called 'hard-wired'), this value is changeable. The phrase 'based upon a given criteria' is broad, because no criterion is given.

Re claim 24: Both of these cases are recited in claim 1 of Watanabe et al., as discussed re claim 26 above.

Re claim 25: The "double reading preventative timer, if actuated once again while having already been actuated, restarts measuring the elapsed time from the beginning" (column 11, lines 38-40).

Re claim 26: This case is recited in claim 1 of Watanabe et al., as discussed re claim 26 above: if the timer has expired, a second read that matches the first read is permitted.

Re claim 31: The logic for reasoning for claim 31 is similar to the reasoning applied to claim 26 above. In Watanabe et al., delay time is a software variable; in this sense the value of the variable can be said to define the mode.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 23-34 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3 and 18 of U.S. Patent No. 6,698,658. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Claims 23-26, 31 and 34 do not add any appreciable limitations to claim 1 of U.S. Patent No. 6,698,658 and in the amount to a slight broadening of the previous claim.

Art Unit: 2876

Claims 27 and 33 have effectively the same scope as claim 18 of U.S. Patent No. 6,698,658, in which the delay time is also selected based upon whether an item is weighable or non-weighable.

Claim 28 has effectively the same scope as claim 1 of U.S. Patent No. 6,698,658, since claim 1 of U.S. Patent No. 6,698,658 refers to selecting a delay time based on "symbol type" which is like selecting delay time based on "type of tag" (claim 28).

Claim 29 is rejected on the basis of double patenting over claim 18 of U.S. Patent No. 6,698,658, since the weighable / non-weighable distinction of U.S. Patent No. 6,698,658 amounts to a class of item.

Claims 30 and 32 are rejected on the basis of double patenting over claim 3 of U.S. Patent No. 6,698,658, which clearly recites the selection of delay time based upon whether the item is a produce item.

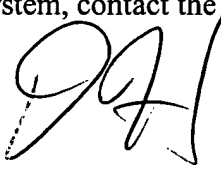
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A Hess whose telephone number is (571) 272-2392. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2876

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DH



KARL D. FRECH
PRIMARY EXAMINER